

**Serial Number 09/548,912****PATENT**  
**IBM Docket No. RAL9-00-0017****REMARKS**

This amendment is in response to the Office Action mailed July 18, 2003.

The Examiner objects to the specification because the attorney's docket number identifies some of applications cross-referenced in the specification. In response, the attorney's docket numbers are replaced with the serial numbers for each of the applications.

Claim 1 is objected to based upon informalities. In response, claim 1 is canceled without prejudice.

Claim 2 is objected to because of the preposition "from" in line 16. The Examiner suggests that "from" should be changed to "to". In response, the claim is amended in accordance with the Examiner's suggestion.

Claim 3 is objected to because it recites time interval whereas time cycle is recited and forms the antecedent in the claim 2. The Examiner suggests that claim 3 be amended by changing "interval" to "cycle". In response, the claim is amended in accordance with the Examiner's suggestion.

Claim 2 is rejected based upon non-statutory judicially created doctrine of obvious type double patenting. In particular, the Examiner indicates claim 2 as being unpatentable over claim 2 of co-pending application number 09/548,910 in view of OHBA (U.S. Patent 6,101,193).

**Serial Number 09/548,912****PATENT****IBM Docket No. RAL9-00-0017**

In response, applicants respectfully traverse the rejection and argue that the rejection is improper in that it is based upon a U.S. patent coupled with application serial number 09/548,910 owned by the Assignee of the present invention. It is applicants' contention that a rejection under the judicially created double patenting obvious type basis has to be based solely on applications or patents owned by common assignee. It cannot be based upon an application owned by common assignee and a patent not owned by the assignee. Because this rejection is improper applicants respectfully request that it be withdrawn. Moreover, applicants argue that claim 2 of the present application is different from claim 2 of application serial number 09/548,910. This being the case the obvious type double patenting rejection is not applicable and should be withdrawn.

Claims 1 and 3 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. As this application applies to claim 1 the rejection is moot because claim 1 has been canceled without prejudice.

Regarding claim 3 the Examiner argues there isn't sufficient antecedent basis to support the limitation of providing. In response, claim 3 is amended to remove any insufficiency of antecedent which may have been in it as originally drafted.

Claims 2 and 3 are rejected under 35 USC 102(e) as being anticipated by Ohba (U.S. Patent 6,101,193). The Examiner's argument in support of the rejection is set forth on pages 5-7. In view of the amended claim those arguments are no longer applicable. Regarding the amended claims 2 and 3 as applied to the prior art U.S. Patent 6,101,193, applicants contend whereas the amended claims use calendar for scheduling Ohba uses queues. Because queues and calendars are different entities applicants argue that the amended claims are not anticipated by Ohba. In addition, applicants argue calculating a

**Serial Number 09/548,912****PATENT****IBM Docket No. RAL9-00-0017**

new position based upon weighing factor and packet size as recited in the claim further defined over the art of record.

It is settled law that in order for a reference to anticipate claims every element of the claim should be found in the reference. As pointed out above features in the claim are not present in the reference, therefore the reference (U.S. Patent 6,101,193) does not anticipate claims 2 and 3.

Claim 1 is rejected under 35 USC 103 as being unpatentable over Duffield (U.S. Patent 6,452,933) in view of Ohba (U.S. Patent 6,101,193). Even though applicants disagree with the Examiner's position claim 1 is canceled without prejudice not because of the prior art but because of expediencies which require redrafting the claim to make it clearer than it was at initial drafting.

Newly added claims 4-18 are submitted for examination and are clearly patentable over the art of record.

It is believed that the present amendment answers all the issues raised by Examiner. Reconsideration is hereby requested and an early allowance of all claims is respectfully solicited.

Respectfully Submitted,



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- 14 -